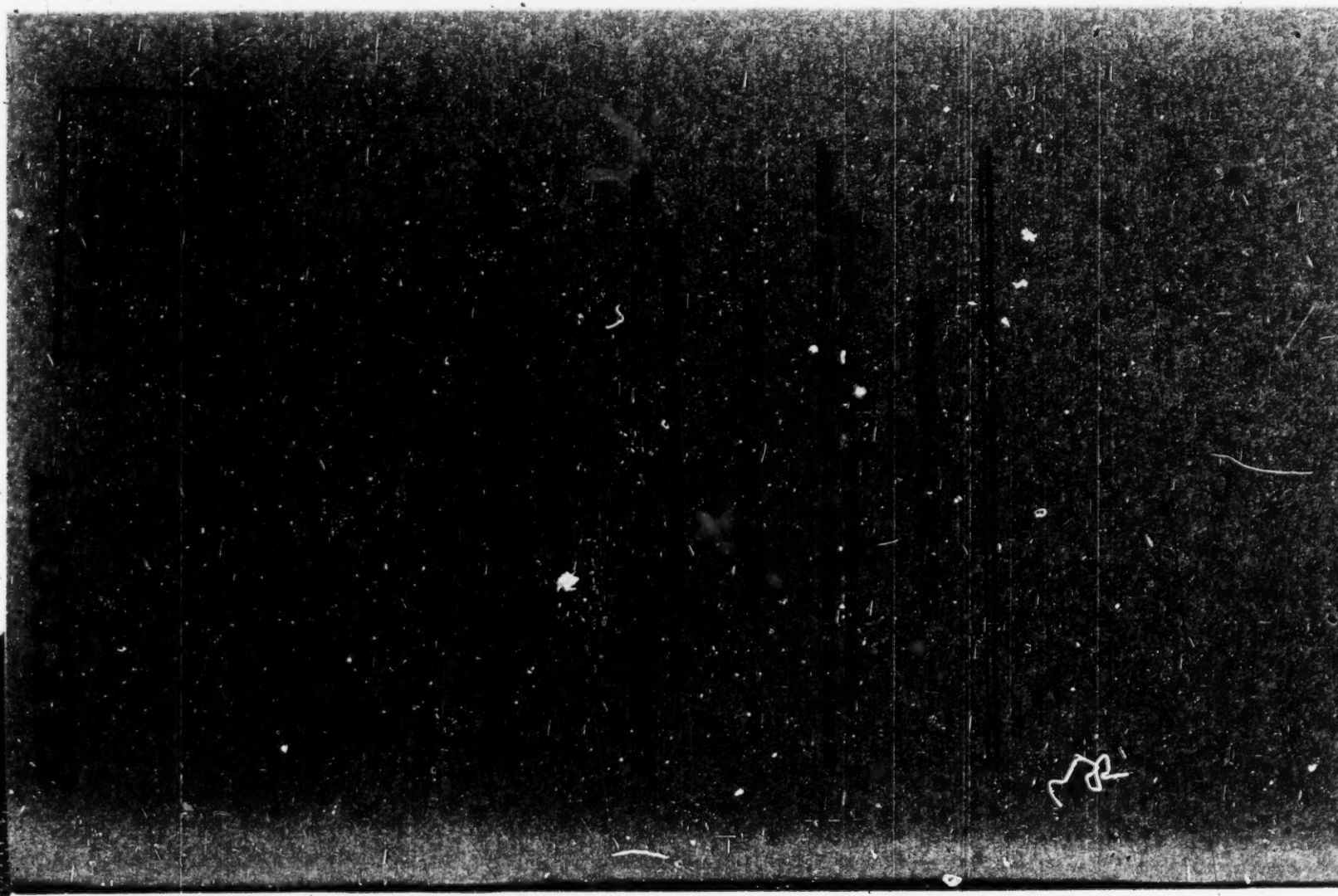

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 330

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

v.

JOSEPH GEORGE STRECKER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana rendered no opinion (R. 65). The opinion of the Circuit Court of Appeals (R. 71–74) is reported in 95 F. (2d) 976. The *per curiam* and dissenting opinions in the Circuit Court of Appeals in connection with the denial of a motion for rehearing by the petitioner herein (R. 77–78) are reported in 96 F. (2d) 1020.

JURISDICTION

The original judgment of the Circuit Court of Appeals was entered April 6, 1938 (R. 74). An

order denying a petition for rehearing (R. 74–76) was entered June 7, 1938 (R. 79), and on the same day an order was entered amending the judgment (R. 79). An order denying a second petition for rehearing and to set aside the judgment as amended, filed June 27, 1938 (R. 80–81), was entered July 27, 1938 (R. 83). The petition for writ of certiorari was filed September 7, 1938, and was granted October 17, 1938 (R. 84). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The questions presented by the petition for writ of certiorari are as follows:

(1) Whether the Circuit Court of Appeals erred in failing to sustain an order of deportation against respondent, an alien who in 1932 became a member of the Communist Party of the United States (Pet. p. 2).

(2) Whether the Circuit Court of Appeals erred in remanding the case for a trial *de novo* in the District Court (Pet. p. 5, Reply Memorandum for Petitioner).

A further question which is not specifically presented by the petition for writ of certiorari but which was decided by the court below and which this Court has the power to consider in order to effect a complete disposition of the case, is the following:

(3) Whether there was any evidence to support the finding contained in the warrant of deportation that respondent "believes in and teaches the overthrow by force and violence of the Government of the United States."

STATUTES INVOLVED

Section 2 of the Act of October 16, 1918, c. 186, 40 Stat. 1012 (U. S. C., Title 8, Sec. 137 (g)), provides—

> That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.

Section 1 of the Act of October 16, 1918, *supra*, as amended by the Act of June 5, 1920, c. 251, 41 Stat. 1008, 1009 (U. S. C., Title 8, Sec. 137 (c)), so far as pertinent, provides—

> 1. That the following aliens shall be excluded from admission into the United States:
>
> * * * * * *
>
> (c) Aliens who believe in, advise, advocate, or teach, or who are members of or affil-

> iated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States * * *;
>
> * * * * *

Section 19 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 890 (U. S. C., Title 8, Sec. 155), provides in part:

> * * * In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

Section 20 of the Immigration Act of 1917, c. 29, 874, 39 Stat. 890 (U. S. C., Title 8, Sec. 156), contains provisions with reference to the place of deportation, etc. With the exception of the section last mentioned, these and prior statutory provisions are more fully set out in Appendix A, *infra* pp. 62–79.

STATEMENT

From the record of departmental hearings, filed by agreement in the District Court (R. 4–7), the following facts appear. Respondent, an alien, legally entered the United States in 1912. In 1933 he filed a petition for naturalization, but before completing that process deportation proceedings were begun against him (R. 4). On November 25, 1933, the Department of Labor issued a warrant for his arrest (R. 5). This warrant (R. 7–8) con-

tained four charges: (1) that the alien believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; (2) that he is a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; (3) that he is a member of or affiliated with an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States; and (4) that he is in the United States in violation of Section 2 of the Act approved October 16, 1918, as amended by the Act approved June 5, 1920, in that after his entry into the United States he has been found to have become a member of one of the classes of aliens enumerated in Section 1 of such act, as amended (*supra*, pp. 3–4), to wit: an alien who is a member of or affiliated with an organization, association, society, or group that believes in, advises, or teaches the overthrow by force and violence of the Government of the United States.

Two hearings were accorded respondent under this warrant of arrest. At each of these hearings

respondent was represented by counsel and was permitted to cross-examine and to present witnesses (R. 5, 8–44, 44–64). Evidence introduced by the Government in support of the warrant at the first hearing, held on January 23, 1934, included (R. 5) membership book No. 2844 of the Communist Party of the United States in the name of the respondent (R. 34–38), a statement made by respondent to an immigration officer on October 25, 1933 (R. 30–34), and a report of a hearing before the Acting District Director of Naturalization, sworn to by respondent on September 16, 1933, on respondent's application for naturalization (R. 38–44). At the first deportation hearing there was also introduced the testimony of the respondent (R. 9–17), of one Florence Levering (R. 17–27) and of a character witness for the respondent (R. 27–29). As the result of the evidence introduced at this hearing (R. 8–44), the Immigration Inspector who conducted the hearing reached the conclusion that the charges contained in the warrant were sustained and recommended deportation (R. 29–30).

The second deportation hearing was held on May 8 [23], 1934 (R. 5, 44). At this hearing the Immigration Inspector who presided stated "that the Bureau of Immigration and Naturalization of Washington has ordered that the case be re-opened for the purpose of introducing into the records of International or other authorities sufficient exhibits

of Literature of the Communist Party to show that the Party advocates to overthrow by force or violence the United States Government or other forms of organized government" (R. 45). What the inspector undoubtedly intended to say was that the case was reopened for the purpose of introducing into evidence exhibits describing the objectives of the Communist International and its affiliate, the Communist Party of the United States. At this hearing the Government read into the record extracts from a magazine entitled "The Communist" dated April 1934, Eighth Convention Issue, "a magazine of the Theory and Practice of Marxism-Leninism, published monthly by the Communist Party of the United States of America" (R. 5, 45–48). After the introduction of this evidence the Immigration Inspector inquired whether the respondent had any evidence to rebut the Government's additional evidence (R. 48). In the rebuttal the respondent introduced several character witnesses and gave further testimony in his own behalf, during which, among other things, he denied certain of the statements contained in his earlier testimony before the immigration and naturalization officers, which had been introduced into evidence at the first deportation hearing (R. 48–64).

On the basis of the evidence adduced at the above hearings the Secretary of Labor on August 14, 1934, issued a warrant for the deportation of respondent (R. 5). This warrant (R. 64–65) found that the

respondent was deportable on the following grounds: (1) that he believes in and teaches the overthrow by force and violence of the Government of the United States; (2) that he is a member of an organization, association, society or group that believes in, advises, advocates, and teaches the overthrow by force and violence of the Government of the United States;[1] (3) that he is a member of an organization, association, society, or group that writes, publishes, and circulates written or printed matter advising, advocating, and teaching the overthrow by force and violence of the Government of the United States; and (4) that after entry he became a mem-

[1] The Government does not rely upon the second and third grounds specified in the warrant. These allege that the respondent "is" a member of the organizations described (R. 64-65). The Communist Party membership book of the respondent discloses that he joined the Party in November 1932, and that he did not pay membership dues after February 1933 (R. 34, 36). He testified that he bought only "a few stamps" to put in the book (R. 14; see also R. 6). The membership book states that "Members who are four weeks in arrears in payment of dues cease to be members of the party in good standing," and that "Members who are three months in arrears shall be stricken from the rolls" (R. 38). It would, therefore, appear that respondent was stricken from the rolls of the Party some time in May 1933. There was no evidence to the contrary. The warrant of arrest was not issued, however, until November 25, 1933 (R. 8), and the warrant of deportation was dated August 14, 1934 (R. 65). In view of the evidence the Government finds no ground for contending that at those times the respondent was a member of the described organizations. Cf. *Greco* v. *Haff*, 63 F. (2d) 863 (C. C. A. 9th).

ber of one or more of the classes of aliens enumerated in Section 1 of the Act of October 16, 1918, as amended by the Act of June 5, 1920 (*supra*, pp. 3–4), to wit, aliens who are members of an organization, association, society, or group that believes in, advocates, and teaches the overthrow by force and violence of the Government of the United States.

On June 25, 1936, respondent filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Arkansas based on the same grounds as the application in the instant case. After hearing the evidence, Judge Martineau, on January 28, 1937, denied the petition but allowed an appeal to the Circuit Court of Appeals for the Eighth Circuit. The appeal was never perfected and was docketed and dismissed in the Circuit Court of Appeals on May 13, 1937 (R. 5).

The petition for writ of habeas corpus in the instant case was filed on June 16, 1937, in the District Court for the Eastern District of Louisiana (R. 5). This petition alleged, among other things, that the warrant of deportation was void because the respondent had not been accorded a fair hearing by the Labor Department and because there was no evidence in the record of the Labor Department to sustain the finding[s] contained in the warrant of deportation (R. 1–2). The writ issued (R. 2) and an answer was filed on behalf of the

petitioner herein (R. 2–4). After hearing all the evidence and the arguments of counsel, Judge Borah, without opinion, denied the application for writ of habeas corpus and remanded the respondent to the custody of the immigration authorities (R. 7, 65).

On appeal (R. 66–69), the Circuit Court of Appeals reversed the order below and remanded the cause for further proceedings not inconsistent with its opinion (R. 74).

The Circuit Court of Appeals rejected the contention of respondent that the deportation hearings had been unfair, but held that there was no evidence to support the findings contained in the warrant of deportation (R. 71–73).

The court declared that the statute under which the proceedings were instituted was enacted in 1918 and amended in 1920 to meet a situation caused by the crisis in Russia in 1918 and 1919 and the propaganda following that crisis for the overthrow of governments by force; that decisions relied upon in that court by the petitioner, that membership in the Communist Party of America alone is sufficient to warrant deportation, were rendered upon the Russian experience and the record of the Party at that time; that they were fact cases, and did not and could not decide that membership in the Communist Party of America, standing alone, is now sufficient to warrant deportation.

The court then pointed out that the situation, politically and socially, had changed since 1920;

that Russia itself is more vigorously organized than almost any other country in the world to prohibit and suppress those who teach and preach the overthrow of government by force; that in this country the Communist Party had participated in the presidential elections of 1932 and 1936; that nothing in our Constitution or our laws forbids the formation of such a party or persons from joining it; and that "The statute invoked here does not forbid membership in the Communist, or in any other party, except one which teaches the overthrow by force and violence, of the government of the United States" (R. 73). Judge Holmes concurred in the result (R. 74).

A petition for rehearing was denied on June 7, 1938, but the judgment of reversal was amended to read "Reversed, with directions to try the issues *de novo* as suggested in *Ex Parte Fierstein*, 41 Fed. (2d) p. 54" (R. 77).

Judge Sibley dissented from the denial of rehearing (R. 77–78). He thought rehearing should be granted, especially to consider the significance of the references to the Third Communist International contained in the membership book issued to respondent by the Communist Party of the United States and the question whether the objectives and programs of the two named organizations can be judicially noticed. He said that "Neither of these things was argued before us nor considered in deciding the case, and they might lead to a different result."

Judge Sibley pointed out that the court in its opinion had resorted to judicial notice in its remarks about recent changes in the methods of the Communist Party and in Soviet Russia (R. 78). And he concluded (R. 78):

> But no one professes to know that the Communist International had in 1933 changed its program, or indeed that the Communist Party of the U. S. A. at that time had. No one doubts that the economic aims of Communism may be lawfully promoted by a citizen or an alien in the United States, so long as they are sought to be attained by peaceable means. But the advocacy of attainment by force and violence is outlawed, because laying the foundation for treason.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that an alien who in 1932 became a member of the Communist Party is not by reason of that fact subject to deportation under the Act of October 16, 1918, as amended by the Act of June 5, 1920 (U. S. C., Title 8, Sec. 137).

(2) In holding that the evidence before the Secretary of Labor concerning the principles of the Communist Party was insufficient to sustain the order of deportation.

(3) In remanding the case for a trial *de novo* in the District Court.

(4) In failing to affirm the judgment of the District Court.

SUMMARY OF ARGUMENT

1. There was evidence before the Secretary of Labor to support the finding in the warrant of deportation that respondent became, after entry, a member of an organization that believes in, advocates, and teaches the overthrow by force and violence of the Government of the United States. Two questions of statutory construction are presented. The first is whether membership subsequent to entry of the alien, but which has terminated, comes within the deportation provisions. The language of the statute and the relevant decisions support the view that an alien who becomes a member of a described organization after entry is subject to deportation whether or not he is a member at the time of arrest or the issuance of the warrant of deportation. The second question concerns the meaning of belief in or advocacy of force and violence: whether to come within the statute the organization must be shown to believe in or advocate the present use of force and violence for the overthrow of the Government, or whether it is enough that the belief or advocacy relates to some future time when the situation is thought to be propitious. This question of construction may be affected by the extent to which the rights of free speech and free assembly are guaranteed to aliens by the Federal Constitution, and the extent to which deportation can be grounded on acts which could not be directly prohibited under the Bill of Rights. These constitu-

tional questions have apparently not been regarded by the courts as of significance in construing the statutory language prescribing grounds for deportation. The language has been held to embrace belief in or advocacy of force and violence whether immediate or ultimate.

On this construction of the statute there was evidence to support the finding of the Secretary, as held in prior cases decided on comparable evidence. The evidence included the membership book of respondent issued by the Communist Party of the United States, which contained pertinent extracts from the Program of the Communist International, adopted by the Party; and, in addition, extracts from an official publication of the Party, which illuminate the meaning of the doctrine of revolution contained in the membership book, were read into the record. The Program of the Communist International, particularly the section on strategy and tactics, reflects belief in and advocacy of force and violence as a means to overthrow the governments of non-Communistic countries. The Secretary was not obliged to place upon the language a different or non-literal construction.

2. There was some evidence in the record to support the finding that respondent himself believes in and teaches the overthrow by force and violence of the Government of the United States.

3. The Circuit Court of Appeals erred in remanding the case for a trial *de novo* in the district court. The order of remand was based upon an

erroneous view of decisions in which such a trial was ordered on the issue of alienage or citizenship. There being no such issue in the present case, the only question for the court concerning the facts is whether there was evidence before the Secretary to support the findings in the order of deportation.

ARGUMENT

I

THERE WAS EVIDENCE IN THE RECORD BEFORE THE SECRETARY OF LABOR TO SUPPORT THE FINDING IN THE WARRANT OF DEPORTATION THAT RESPONDENT, AFTER ENTRY, BECAME A MEMBER OF AN ORGANIZATION THAT BELIEVES IN, ADVOCATES AND TEACHES THE OVERTHROW BY FORCE AND VIOLENCE OF THE GOVERNMENT OF THE UNITED STATES

The scope of review of an order of deportation has been defined in numerous decisions of this Court. In *Vajtauer* v. *Commissioner of Immigration,* 273 U. S. 103, 106, this Court said:

> Deportation without a fair hearing or on charges unsupported by any evidence is a denial of due process which may be corrected on *habeas corpus.* Cf. *Chin Yow* v. *United States,* 208 U. S. 8; *Kwock Jan Fat* v. *White,* 253 U. S. 454. But a want of due process is not established by showing merely that the decision is erroneous, *Chin Yow* v. *United States, supra,* 13, or that incompetent evidence was received and considered. See *Tisi* v. *Tod,* 264 U. S. 131, 133. Upon a collateral review in *habeas corpus* proceedings, it is sufficient that there was *some* evidence

> from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince a court of the essential unfairness of the trial. *Tisi* v. *Tod, supra.* [Italics ours.]

See also *Low Wah Suey* v. *Backus,* 225 U. S. 460, 468; *United States* v. *Ju Toy,* 198 U. S. 253; *Chin Yow* v. *United States,* 208 U. S. 8; *Tang Tun* v. *Edsell,* 223 U. S. 673.

As the respondent's contention in the Circuit Court of Appeals that the deportation hearings were unfair was summarily rejected by that court (R. 71), and as the contention was not made in the respondent's brief in opposition in this Court, that question is presumably not presented for consideration here. Cf. *Zellerbach Paper Co.* v. *Helvering,* 293 U. S. 172, 182. There remains, however, the principal question whether there was any evidence to support the finding of the Secretary of Labor contained in the warrant of deportation that, after entry, respondent became a member of an organization that believes in, advocates, and teaches the overthrow by force and violence of the Government of the United States.

A. THE STATUTE

The finding just described, in the order of deportation, was made pursuant to that portion of Section 2 of the Act of October 16, 1918 (*supra,* p. 3), which provides "That any alien who, at

any time after entering the United States, is found to have been at the time of entry, or to *have become thereafter,* a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported" [italics ours], and upon that portion of Section 1 of the Act of October 16, 1918, as amended by the Act of June 5, 1920 (*supra,* pp. 3–4), which enumerates among the classes of aliens therein referred to "Aliens * * * who are members of * * * any organization * * * that believes in, advises, advocates, or teaches * * * the overthrow by force or violence of the Government of the United States."

The first question of statutory construction is whether membership after entry, but which has terminated, is ground for deportation. There would seem to be no doubt that the statutory language covers any alien who, after entry, became a member of a proscribed organization even though he was not so at the time of arrest or at the time the warrant of deportation was issued. In *United States ex rel. Yokinen* v. *Commissioner of Immigration,* 57 F. (2d) 707, 708 (C. C. A., 2d), certiorari denied, 287 U. S. 607, it was said:

> It is true that he was not a member of the Communist Party when arrested. He had recently been expelled because of his attitude toward negroes, but that did not remove him from the reach of the statute. We have

nothing to do with shaping the policy of the law toward aliens who come here and join a proscribed society. Congress has provided that "any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in this section" shall be deported. 8 U. S. C. A. § 137 (g). This alien concededly did become after entry a member of "one of the classes * * * enumerated" and from that time became deportable. We are urged to ameliorate the supposed harshness of the statute by reading into it words that Congress saw fit to leave out and interpret it to apply not to aliens who become members, but only to those who become and continue to the time of their arrest to be members, of one of the enumerated classes. If the words used in the statute were equivocal or the intention of Congress for any reason uncertain, there might be room for such a construction as that for which the appellant now contends. Perhaps the sufficient answer is that had Congress intended membership at the time of arrest to be the criterion it would have said so. It has the power to determine what acts of an alien shall terminate his right to remain here. *Skeffington* v. *Katzeff et al.* (C. C. A.) 277 F. 129. What it did do was to make the act of becoming a member a deportable offense without regard to continuance of membership and it did that in

> language so plain that any attempt to read in any other meaning is no less than an attempt to circumvent the law itself.

The same question was presented to this Court in the case of *United States ex rel. Mannisto* v. *Reimer*, in which this Court denied a writ of certiorari (296 U. S. 600) to review a decision of the Circuit Court of Appeals for the Second Circuit (77 F. (2d) 1021).

Congress has apparently approved this construction of the statute, which represents the long-continued administrative practice of the Department of Labor, as Congress recently passed a private Act cancelling a warrant of deportation directed at two aliens who joined the Communist Party inadvertently and then withdrew from membership, the attention of Congress being drawn to the fact that under the language of the 1918 Act the aliens were, nevertheless, mandatorily deportable. (See An Act For the Relief of Angelo and Auro Cattanea approved July 5, 1937, 50 Stat. (Pt. 2) 1013, and Senate Report No. 769, 75th Cong., 1st Session, Committee on Immigration, accompanying H. R. 1731).

The second question of statutory construction concerns the meaning of belief in, or advocacy of, the overthrow of the Government by force or violence—whether the belief or advocacy must relate to some present use of force or may relate to its use at any time in the indefinite future.

While respondent did not specifically raise in his petition for habeas corpus (R. 1–2), or in his assignment of errors below (R. 67–69), or in his brief in opposition to certiorari, the question of the constitutional right of freedom of speech and of assembly under the First Amendment of the Federal Constitution, that question may be deemed by the Court to be pertinent with respect to this question of statutory construction. Cf. *Herndon* v. *Lowry*, 301 U. S. 242. The rule of construction may be invoked under which a statutory provision must be given, if possible, a construction which will avoid serious constitutional doubt. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, 492. The constitutional power to limit freedom of speech and of assembly in the interests of safeguarding the state was thus defined in the *Herndon* case, *supra* (p. 258):

> The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution.

It was pointed out in that case that "peaceful agitation for a change of our form of government

is within the guaranteed liberty of speech" (p. 259). In that case this Court set aside, on constitutional grounds, a conviction under a criminal insurrection statute of Georgia which made it an offense to advocate violence against the state whether the violence was intended to result immediately or "at any time within which he [the defendant] might reasonably expect his influence to continue to be directly operative in causing such action by those whom he sought to induce" (pp. 254–255). The opinion in that case reserved the question whether the state might specifically have "made membership in the Communist Party unlawful by reason of its supposed dangerous tendency even in the remote future" (p. 260).

In the present case, unlike the *Herndon* case, the question relates to the power of Congress over resident aliens and the rights of such aliens under the Constitution. It is, of course, settled that Congress may order the deportation of classes of aliens and may commit the execution of such laws to administrative officials, subject to the procedural safeguards guaranteed by the due process clause of the Fifth Amendment and by the other provisions of the Bill of Rights. In *Wong Wing* v. *United States*, 163 U. S. 228, 238, it was said:

> Applying this reasoning to the Fifth and Sixth Amendments, it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments, and that even aliens shall not be held to answer for a

> capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty or property without due process of law.

And in *The Japanese Immigrant Case*, 189 U. S. 86, 100, it was said:

> But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.

Similarly, the protection of the due process and equal protection clauses of the Fourteenth Amendment has been held to extend to aliens. E. g., *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369; *Truax* v. *Raich*, 239 U. S. 33, 39. And the property rights of aliens who are not subjects of enemy states have likewise been held to be protected by the Constitution. In *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, this Court determined that a Russian corporation was entitled to recover from the United States just compensation for the requisitioning of its contracts for use by the United States during the war.

It would appear to be settled, therefore, that with respect to aliens while resident here, the power of Congress is subject to the limitations of the Constitution, and that an appropriate basis must be found for subordinating the rights of persons

under the First Amendment to the exercise of Congressional control. That justification is ordinarily to be sought in the protection of the Government against the danger of overthrow by force and violence. The *Herndon* case, *supra*, suggests that the apprehended danger must have some immediacy and cannot be of an indefinite or remote character if the power of the Government is to be validly exerted.

The question whether a similar standard is applicable in relation to *deportation* is one which has not been squarely passed upon by this Court. The power to prescribe the terms and conditions upon which aliens may enter and may remain within the country is clearly conferred upon Congress. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425; *Ng Fung Ho* v. *White*, 259 U. S. 276, 280. The assumption that this authority includes the power to deport aliens even for acts the direct proscription of which might infringe the Bill of Rights involves practical as well as logical difficulties. The assumption has been made, however, by the courts, and the construction of the deportation provisions has apparently been unaffected by consideration of the extent to which freedom of speech and of assembly of resident aliens might be directly abridged under the Constitution. *Ex parte Pettine*, 259 Fed. 733, 735 (Mass.); *Lopez* v. *Howe*, 259 Fed. 401 (C. C. A. 2d); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 Fed. Supp. 485, 487 (S. D. N. Y.); cf.

Colyer v. *Skeffington*, 265 Fed. 17, 22–23, 60 (Mass.), reversed, 277 Fed. 129 (C. C. A. 1st).[2]

As a matter of statutory construction, the range of the provisions in question has not been thought by the courts to be limited to those organizations that believe in, teach, or advocate the immediate overthrow of the Government of the United States; it has been deemed to include as well those organizations that believe in or seek the achievement of such an objective at a time when the

[2] The question whether the power to *exclude* aliens before entry furnishes a basis for admitting them on condition that they will refrain to some extent from the exercise of the right of free speech or free assembly is an issue that appears not to be raised by the facts of the present case. Respondent entered the country in 1912 (R. 4). At that time the pertinent provisions of the immigration law were Sections 2 and 38 of the Act of February 20, 1907, c. 1134, 34 Stat. 898, 899, 908–909 (Appendix, *infra*, pp. 64–65, 66). Section 2 provided for the exclusion of "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, * * *." Section 38 provided for the exclusion of any alien "who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character." There was no provision for deportation in the event that an alien became a member of such an organization subsequent to entry. A provision of the latter kind appeared for the first time in the Act of October 16, 1918, c. 186, Sec. 2, 40 Stat. 1012. See Appendix A, *infra*, p. 77.

occasion seems propitious. Not only do the provisions contain no restrictive language with reference to the imminence of the overthrowing of this Government, but the provisions would have scant applicability if confined in operation to organizations that believe in, teach, or advocate the immediate overturning of this Government. Moreover, the fact that there are comparable provisions with reference to the beliefs, teachings, and advocacy of individual aliens (*supra*, pp. 3–4) also suggests that Congress was not concerned with the time element in speaking of the overthrow of this Government by force and violence. The theory of the statute appears to be that aliens who believe in the destruction of our form of government through force or violence or who belong to an organization entertaining or teaching such a doctrine are no less objectionable if they envisage the accomplishment of their objective at an opportune future time than if they advocate it as an immediate endeavor.

The question whether the advocacy or belief contemplated by the statute must relate to immediate overthrow has been considered by several courts, and heretofore a negative answer has been given. In *United States ex rel. Georgian* v. *Uhl*, 271 Fed. 676 (C. C. A. 2d), the court said, per Hough, J. (p. 677):

> We express no opinion as to the result upon our minds of the evidence adduced at the deportation hearing, beyond this, viz.

there was evidence, indeed it was admitted, that though he did not and does not believe in the immediate overthrow of the government of the United States that position is not the result of any affection for the same or approval of this republic, nor of any objection to force and violence per se, but only results from an opinion that the time is not ripe. Ripeness is to be attained by teaching, and by the dissemination of the style of literature which it is his business to circulate; when the time is ripe, it is to be hoped that force and violence will not be necessary, but they will be appropriate as soon as they are likely to prevail.

However fantastic the above-outlined social program may seem, it is impossible to say that a professed and avowed effort to hasten its consummation is not evidence of that which the statute forbids.

In *United States ex rel. Abern* v. *Wallis*, 263 Fed. 413, 416 (S. D. N. Y.), the court (Knox, J.) said:

It may, of course, be suggested that some regard should be had for the imminence of such a possibility, and I am free to say that from the party's organization, as appears in the record, such possibility is not of the immediate future. The act of Congress, however, under which this proceeding was instituted, provides for the deportation of aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force

> and violence of the government of the United States. It will thus be observed that the question here is not one of degrees of imminence of overthrow by force and violence, but rather whether that is the ultimate purpose of the organization.

See also *Kjar* v. *Doak,* 61 F. (2d) 566, 568 (C. C. A. 7th).

Support for such a construction is also contained in the decision of this Court in *Turner* v. *Williams,* 194 U. S. 279. In that case there was involved the constitutionality of a provision contained in the Immigration Act of 1903 for the deportation of aliens who, at the time of entry, were "anarchists." The argument was made that "conceding that Congress has the power to shut out any alien, the power nevertheless does not extend to some aliens, and that if the act includes all alien anarchists, it is unconstitutional, because some anarchists are merely political philosophers, whose teachings are beneficial rather than otherwise" p. 292). After pointing out through a dictionary definition that the term "anarchist" is used in the popular sense as "one who seeks to overturn by violence all constituted forms and institutions of society and government, all law and order, and all rights of property, with no purpose of establishing any other system of order in the place of that destroyed" the Court said (p. 293):

> The language of the act is "anarchists, or *persons who believe in or advocate the over-*

> *throw by force or violence of the Government of the United States* or of all government or of all forms of law, or the assassination of public officials." If this should be construed as defining the word "anarchists" by the words which follow, or as used in the popular sense above given, it would seem that when an alien arrives in this country, who avows himself to be an anarchist, without more, he accepts the definition. And we suppose counsel does not deny that this Government has the power to exclude an alien who believes in or advocates the overthrow of the Government or of all governments by force or the assassination of officials. To put that question is to answer it. [Italics ours.]

The Court then reviewed the evidence with reference to the alien involved and came to the conclusion (p. 294) that "we cannot say that the inference was unjustifiable either that he contemplated the *ultimate realization* of his ideal by the use of force, or that his speeches were incitements to that end." [Italics ours.]

It would also seem significant, as indicating the broad construction which this Court thought might properly be given the statute, that it further said (p. 294):

> If the word "anarchists" should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent, it would follow that Congress was of opinion that the

> tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few, and, in the light of previous decisions, the act, even in this aspect, would not be unconstitutional, or as applicable to any alien who is opposed to all organized government.

See also *Lopez* v. *Howe*, 259 Fed. 401, 404–405 (C. C. A. 2d), *supra; Ex parte Pettine*, 259 Fed. 733, 735 (Mass.), *supra*.

That a like meaning was meant to be given the provisions in question is suggested by the reenactment of the provisions involved in *Turner* v. *Williams*, 194 U. S. 279, in the Immigration Act of February 20, 1907, c. 1134, Sec. 2, 34 Stat. 898, 899, and (with a minor change) in the Immigration Act of February 5, 1917, c. 29, Sec. 3, 39 Stat. 874, 875–876. See Appendix A, *infra*, pp. 64–65, 67. Although Congress in the Immigration Act of October 16, 1918, c. 186, Sec. 1, 40 Stat. 1012, Appendix A, *infra*, pp. 76–77, placed alien "anarchists" in a separate class from those aliens "who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law," and placed also in another class those aliens "who advocate or teach the assassination of public officials," and while a similar grouping was made in the amendatory Act

of June 5, 1920, c. 251, 41 Stat. 1008, 1009, Appendix A, *infra*, p. 78, there is nothing in the legislative history indicating that these amendments were meant to disturb the construction given by this Court in the *Turner case* to the language "the overthrow by force or violence of the Government of the United States" or to confine the construction to those classes of aliens comprehended within the term "anarchists." While the provisions interpreted in the *Turner* case and the comparable provisions in later legislation, to which reference has been made, relate only to the beliefs, teachings, and advocacy of individual aliens, there would appear to be no reason to suppose that Congress meant to give a different interpretation to the similar language which it employed with reference to organizations. It is well settled that reenactment of language which has been judicially construed constitutes a legislative adoption of such construction. *Johnson* v. *Manhattan Ry Co.*, 289 U. S. 479, 500; *Heald* v. *District of Columbia*, 254 U. S. 20, 23. Cf. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 557; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 493.

There is nothing in the legislative history of the phrase "the overthrow by force or violence of the Government of the United States" as used either in the 1920 [3] or 1918 [4] Acts or in the prior statutes of

[3] S. Rept. No. 648, 66th Cong., 2nd Sess.; H. Rept. No. 504, 66th Cong., 2nd Sess.

[4] H. Rept. No. 645, 65th Cong., 2nd Sess.

1917,[5] 1907,[6] and 1903,[7] which indicates that Congress intended the phrase to be given such a narrow construction as would include only those aliens or organizations that believe in, teach, or advocate the immediate overthrow of this Government. Congressman Shattuc, the Chairman of the House Committee on Immigration and Naturalization, in presenting to the House the bill which became the 1903 Act, and in pointing to some of the evils which it sought to meet, indicated a purpose in the bill as a whole broader than the protection of our Government against a danger of present overthrow:

> * * * it has developed, new elements have been purposely injected into the stream [of immigrants] which, unless checked, threaten not only to seriously pollute it, but also to thrust upon our nation and the States burdens they should not be called upon to bear.
>
> By reason of this change the feeling of welcome which had hailed the incoming immigrant from 1821 to 1875 changed to one of alarm lest "the unguarded gate" might

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[5] S. Rept. No. 352, 64th Cong., 1st Sess. See also S. Rept. No. 355, 63d Cong., 2nd Sess.; H. Rept. No. 140, 63d Cong., 2nd Sess.; H. Rept. No. 149, 63d Cong., 2nd Sess.; H. Rept. No. 1270, 63d Cong., 3rd Sess.; H. Rept. No. 1368, 63d Cong., 3rd Sess.; H. Rept. No. 851, 62nd Cong., 2nd Sess.; H. Rept. No. 1340, 62nd Cong., 3rd Sess.; H. Rept. No. 1378, 62nd Cong., 3rd Sess.; H. Rept. No. 1410, 62nd Cong., 3rd Sess.

[6] H. Rept. No. 7607, 59th Cong., 2nd Sess. See also S. Rept. No. 187, 61st Cong., 2nd Sess.

[7] S. Rept. No. 2119, 57th Cong., 1st Sess.; H. Rept. No. 982, 57th Cong., 1st Sess.

> allow entrance too freely to elements discordant and not easily assimilated, as well as burdensome and harmful to the best interests of the country.
>
> Hence there has arisen the demand, growing more and more insistent, that restrictive measures should be enacted to regulate the influx and sift the quality of the incoming aliens. * * * (35 Cong. Record, 5757.)[a]

While the construction of the provisions in question was not specifically involved in *Vajtauer* v. *Commissioner of Immigration, supra,* this Court there held that certain evidence constituted at least some evidence to show that the alien "advised and advocated opposition to all organized government and the overthrow of the United States government by violence" (273 U. S. 110). There is nothing in the evidence referred to in that case (see footnotes 3 and 4 of the opinion, pp. 107–109) which indicates the advocacy of an immediate overthrow

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[a] The Report of the House Committee on Immigration and Naturalization, accompanying this bill, with respect to the instant provision, stated: "The second class [the class herein involved] was introduced to enable this country to deal effectively with an evil of a most insidious character, by rejecting those aliens whose purpose in seeking the protection and freedom furnished by American institutions is to propagate the doctrine of forcible resistance, by bloodshedding if necessary, to organized law and order, upon the theory that an effective treatment of the evil can be best secured by refusing admission to the teachers and disciples of a system not indigenous to the soil of this country" (House Report No. 982, 57th Cong., 1st Sess., p. 3).

of this Government. Indeed, the evidence referred to in footnote 4 of the opinion (p. 109) clearly indicates that the alien had in mind the future destruction of the Government.

It should also be pointed out that there is nothing in the decision of the Circuit Court of Appeals which suggests that that court was of the view that the provisions involved should be limited to a belief in or advocacy of the immediate destruction of this Government.

B. THE RECORD

If the provisions in question are properly interpreted as referring to any alien who, after entry, becomes a member of an organization that believes in, advises, teaches, or advocates the overthrow by force or violence of this Government either immediately or ultimately, it cannot be said that the record before the Secretary of Labor was wanting in evidence to support a finding that the respondent came within the class described.

Respondent admitted that he joined the Communist Party of the United States in November 1932 (R. 11, 42). His membership book, which was issued on January 3, 1933, and refers to the alien as having entered the "Revolutionary Movement," discloses that he was admitted as a member on the preceding November 15 (R. 11–12, 34). No dues stamps were affixed to the membership book for any period subsequent to February 1933 (R. 36).

The qualifications for, and obligations of, membership in the Communist Party of America and the relation of that Party to the Communist International are set forth in the statutes of the Communist Party of the United States, as found in the membership book which was introduced at the first deportation hearing (R. 11, 35–38):

§ 3. MEMBERSHIP

1. A member of the Party can be every person from the age of eighteen up who accepts the program and statutes of the Communist International and the Communist Party of the U. S. A., who becomes a member of a basic organization of the Party, who is active in this organization, who subordinates himself to all decisions of the Comintern and of the Party, and regularly pays his membership dues.

* * * * *

§ 4. THE STRUCTURE OF THE PARTY

1. The Communist Party, like all sections of the Comintern, is built upon the principle of democratic centralization. These principles are: * * *

* * * * *

(c) Acceptances and carrying out of the decisions of the higher Party committees by the lower Strict Party discipline, and immediate and exact applications of the decisions of the Executive Committee of the Com-

munist International and of the Central Committee of the Party.

* * * * *

(e) The discussion on basic Party questions or general Party lines can be carried on by the members only until the Central Committee has decided them. After a decision has been adopted at the congress of the Comintern, the Party convention, or by the leading Party committee, it must be carried out unconditionally, even if some of the members or some of the local organization are not in agreement with the decision.

* * * * *

§ 12. PARTY DISCIPLINE

1. The strictest Party discipline is the most solemn duty of all Party members and all party organizations. The decisions of the CI and the Party Convention of the CC and of all leading committees of the Party, must be promptly carried out. Discussion of questions over which there have been differences must not continue after the decision has been made.

* * * * *

ON DISCIPLINE

He who weakens, no matter how little, the iron discipline of the Party of the proletariat (especially during the period of dictatorship) effectually helps the bourgeoisie against the proletariat (Lenin).

The Party as the best training school for working class leaders, is the only organiza-

tion competent, in virtue of its experience and authority to centralize the leadership of the proletarian struggle and thus to transform all non-Party working class organizations into accessory organs and connecting belts linking up the Party with the working class as a whole (Lenin).

The foregoing extracts indicate adoption of and subservience to the Program and statutes of the Communist International by the Communist Party of the United States. The objectives and methods thus adopted as binding upon the Party are likewise described in the membership book (R. 38):

WHAT IS THE COMMUNIST PARTY?

The Party is the vanguard of the working class and consists of the best, most class conscious, most active, the most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle, basing itself upon the *revolutionary theory of Marxism* and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will, and of *proletarian revolutionary action.* (From the program of the Communist International.)

We are the Party of the working class. Consequently, nearly the whole of that class (in time of war and civil war, the whole of that class) should work under the guidance of our Party, should create the closest con-

> tacts with our Party (Lenin). [Italics ours.]

The first paragraph of the above is taken, as the record shows, from the Program of the Communist International. Whether such phrases as "proletarian revolutionary action" and "revolutionary theory of Marxism" would be too equivocal in themselves to support the conclusion that the Communist Party believes in the overthrow of the Government by force and violence is a question that it seems unnecessary to consider,[9] for the record contains additional evidence bearing on their meaning. At the second of the deportation hearings, passages were read into the record from a journal dated April 1934, entitled "The Communist, Eighth Convention Issue, a magazine of the Theory and Practice of Marxism-Leninism, published monthly by the Communist Party of the United States of America" (R. 45). The following passage contains an interpretation of the "revolutionary theory of Marxism" which expressly repudiates the notion that it is compatible with peaceful and orderly change (R. 47–48):

> In a period of imperialism, to propagate for a proletarian revolution without carrying on propaganda and preparation for the

[9] In *Herndon* v. *Lowry*, 301 U. S. 242, 249–250, this Court characterized the same passage as "innocent upon its face however foolish and pernicious the aims it suggests," and as being a "vague declaration" and a "statement of ultimate ideals." This characterization was made, of course, from the standpoint of the criminal insurrection statute of Georgia.

mass political strike and for an armed insurrection of the fight for power, means to disarm the workers in the fact of the attack of the bourgeoisie,

DeLeon's conception of the proletarian revolution was the same, as far as the deception for the American proletariat goes, as that of the reformists of the Second International, in spite of his revolutionary phrases. Lenin, in his State and Revolution, makes a classical formulation about Kautsky's position on this point, which can fittingly apply to DeLeon, Lenin states:

"The necessity of systematically fostering among the masses this and just this point of view about *violent revolution* lies at the root of the whole Marx' and Engles' teachings. The neglect of such propaganda and agitation by both the present predominant social-chauvinists and Kautskyist currents being their betrayal * * * into prominent relief" (p. 20, International Ed.).[10]

The question of a *violent revolution* lies at the root of Marx's teachings. *Only philistines or downright opportunists can talk about revolution without violence.* [Italics ours.]

The following is quoted from the Program of the Communist International (R. 47):

The Party must neither stand aloof from the daily needs and struggles of the working

[10] It may be added that immediately following this passage Lenin wrote: "The replacement of the bourgeois by the proletarian state is impossible without a violent revolution."

> class nor confine its activities exclusively to them. The task of the Party is to utilize these minor everyday needs as a starting point from which to lead the working class to the *revolutionary struggle for power* (C. I. Program). [Italics ours.]

There is nothing in the record to indicate that this country was meant to be excepted from the Program. On the contrary, the passages read into the record, taken with the exposition in the membership book of the strict adoption of that Program by the Party in this country, furnish a basis for concluding that force and violence were believed in and advocated as a method of obtaining power in any so-called capitalistic or imperialistic country, including, as it is declared, the United States. The following passages are relevant in this regard:

> It is more than likely th in the course of the development of the world revolution, there will come into existence—*side by side with the foci of imperialism in the various capitalist lands and with the system of these lands throughout the world*—foci of socialism in various Soviet countries, and a system of foci throughout the world. As the outcome of this development, there will ensue *a struggle between the rival systems*, and its history will be the history of the *world revolution*. The world-wide significance of the October revolution lies not only in the fact that it was the first step taken by any country whatsoever to shatter imperialism, that it brought into being the first little island of

socialism in the ocean of imperialism, but likewise in the fact that *the October revolution is the first stage in the world revolution and has set up a powerful base whence the world revolution can continue to develop"* (Stalin, "The October Revolution and the Tactics of the Bolsheviks." Leninism, International Publishers, Vol. 1, pp. 215, 216). [Italics ours.] (R. 46-47.)

Every party that desires to belong to the Communist International must give every possible support to the Soviet republics in their struggle against all counter-revolutionary forces. The Communist parties should carry on precise and definite propaganda to induce the workers to refuse to transport munitions of war intended for enemies of the Soviet Republics, *carry on legal, or illegal propaganda among the troops which are sent to crush the workers' republics*, etc.[11]

To fulfill this duty, the *Communist Parties* must carry to the broadest masses the words of the call of the Central Executive Committee of the Chinese Soviet Republic, which are directed to the toilers of the entire world. They *must conduct not only agita-*

[11] This paragraph is taken from the fourteenth condition of admission into the Communist International, as stated in *The Communist*, April 1934, p. 392 (from which the passage was read). There were 21 such conditions formulated and adopted by the Second World Congress of the Communist International in 1920, and these were in force while respondent was a member of the Communist Party of the United States. See Appendix C, *infra*, pp. 93–100.

tion, but they must also organize actions directed against the transportation of weapons and munitions to China, against the intervention of American, European, and Asiatic imperialists. (R. 46.) [Italics ours.]

These excerpts from the official organ of the Communist Party of the United States furnish a basis for concluding that it is a party which seeks the overthrow through violent revolutionary action, when the occasion seems propitious, of the governments of so-called capitalistic-imperialistic countries, of which America is regarded as one.

Respondent was asked by the Immigration Inspector after the introduction of these excerpts whether he had "any documents to present or evidence to offer at this time in rebuttal of this evidence that your membership in the Communist Party constitutes membership in an organization which believes in or teaches the overthrow by force or violence the government of the United States or all forms of organized government?" (R. 48). Respondent introduced no evidence tending to explain or refute the foregoing evidence, but presented only testimony by his acquaintances as to his personal character and as to whether they had heard him advocate Communism and by himself as to his beliefs. He also denied that he made certain statements appearing in the testimony which he gave before the immigration and naturalization officers prior to the deportation hearings (R. 48–64). Respondent did not question that the excerpts from

the magazine, although it was published about a year after his membership in the Party terminated, represented the beliefs and teachings of the Party at the time he was a member thereof. (Cf. *Kjar* v. *Doak*, 61 F. (2d) 566, 569 (C. C. A. 7th).

Respondent's own understanding of the objectives and methods of the Party apparently corresponded with that contained in the above commentaries. At a preliminary examination by an Immigration Inspector respondent testified (R. 32–33), which testimony was introduced at the first deportation hearing (R. 10), that at the time of his initiation into the Communist Party he was familiar with its intents and purposes; that he acquired prior knowledge of Communism from a study of the writings of Marx over a period of about ten years; that he was in accord with Marx in regard to the social order of things; that the Communist Party of America proposes to destroy capitalism and establish a government by the people similar to that now in existence in Russia; that the leaders of communism say that it will resort to armed force in the event that it should be necessary; that he would not personally bear arms against the present United States Government "because Communism is not strong enough now."

Respondent did not contend in the courts below that the extracts from the Program of the Communist International and the commentaries thereon should be supplemented by other portions of the

Program. It may be pointed out, however, that the extract contained in the membership book and quoted above (*supra*, p. 36) is to be found in Chapter VI, the final chapter, of the Program, entitled "The Strategy and Tactics of the Communist International in the Struggle for the Dictatorship of the Proletariat," in Section 2 thereof, the final section entitled "The Fundamental Tasks of Communist Strategy and Tactics." See Appendix, *infra*, p. 80. The entire Program, which was adopted on September 1, 1928, at the Sixth World Congress of the Communist International held at Moscow, is a document of about twenty thousand words and has been published in an official English text by Workers Library Publishers, Inc.[12] The section on Strategy and Tactics, from which the quoted excerpt was taken, contains a program of action for various stages in the revolutionary movement: the stage when "a revolutionary situation is developing," "when the revolutionary tide is rising" and "when the revolutionary tide is not rising" (*infra*, pp. 85–86). It is when the revolutionary tide is

[12] Analysis and discussion of the program may be found in the following works, *inter alia*: *Foreign Affairs*, January 1929, pp. 259–269; Florinsky, *World Revolution and the U. S. S. R.* (1933), pp. 177–193; *Bolshevism, Fascism, and Capitalism* (Institute of Politics, Williams College, 1932); *New Governments in Europe, A Trend Towards Dictatorship* (Foreign Policy Association, 1934, Revised Edition 1937); Sidney and Beatrice Webb, *Soviet Communism—A New Civilization* (1936).

rising that the occasion is believed to be appropriate for the use of force and violence, as the following passage indicates (*infra*, pp. 85–86):

> When the revolutionary tide is rising, when the ruling classes are disorganized, the masses are in a state of revolutionary ferment, the intermediary strata are inclining towards the proletariat, and the masses are ready for action and for sacrifice, the Party of the proletariat is confronted with the task of leading the masses to a direct attack upon the bourgeois State. This it does by carrying on propaganda in favor of increasingly radical transitional slogans (for Soviets, workers' control of industry, for peasant committees for the seizure of the big landed properties, for disarming the bourgeoisie and arming the proletariat, etc.), and by organizing *mass action*, upon which all branches of the Party agitation and propaganda, including parliamentary activity, must be concentrated. This mass action includes: a combination of strikes and demonstrations; a combination of strikes and armed demonstrations and, finally, the general strike conjointly with armed insurrection against the State power of the bourgeoisie. The latter form of struggle, which is the supreme form, must be conducted according to the rules of war; it presupposes a plan of campaign, offensive fighting operations and unbounded devotion and heroism

on the part of the proletariat. An absolutely essential condition precedent for this form of action is the organization of the broad masses into militant units, which, by their very form, embrace and set into action the largest possible numbers of toilers (Councils of Workers' Deputies, Soldiers' Councils, etc.), and intensified revolutionary work in the army and the navy.

At an earlier point in the program (ch. IV, The Period of Transition from Capitalism to Socialism and the Dictatorship of the Proletariat) the transformation of social and economic relations by parliamentary means is repudiated as impractical:[18]

> The conquest of power by the proletariat does not mean peacefully "capturing" the ready-made bourgeois State machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and its political domination. Like the feudal nobility of the past, the bourgeoisie cannot abandon its historical position to the new class without a desperate and frantic struggle. Hence, the violence of the bourgeoisie can be suppressed only by the stern violence of the proletariat. The conquest of power by the proletariat is the vio-

[18] From "Program of Communist International," published by Workers Publishing Co., Inc. (N. Y., 2d ed. 1933), pp. 36–37.

lent overthrow of bourgeois power, the destruction of the capitalist State apparatus (bourgeois armies, police, bureaucratic hierarchy, the judiciary, parliaments, etc.), and substituting in its place new organs of proletarian power, to serve primarily as instruments for the suppression of the exploiters.

It cannot be gainsaid, of course, that much of the language used is susceptible of an interpretation more rhetorical than literal. See Anderson, J., in *Colyer* v. *Skeffington*, 265 Fed. 17, 59 (Mass.), reversed, 277 Fed. 129 (C. C. A. 1st).[14]

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[14] Compare also the view taken of the philosophy of the Communist Party in Australia by Evatt, J., *obiter*, in *The King* v. *Hush, Ex parte Devanny* (1932), 48 C. L. R. 487, 516–518:

"There is much in the matters averred and printed to suggest that the Communist Party advocates that the whole Parliamentary machine must be completely changed—transformed—revolutionized, in order that a monopoly of political power shall be given to the working class, and that owners of private industries, property and wealth shall be dispossessed without compensation; further, that it is highly probable that so great a change, whether or not it is approved by the majority or ordained by law, will not be acquiesced in without resort to force on the part of those dispossessed, that, in this sense, a violent civil upheaval will, almost certainly, accompany the proposed transformation of society and that actual civil violence and disturbance will accompany the attempted socialization of industry.

* * * * *

The doctrine of the class struggle raises a dispute as to fact, rather than opinion. It is not a question whether it is

But since the Party saw fit to use words of general application which in their popular and ordinary sense fairly import that the Party believes in and advocates the overthrow of this Government other than by orderly or lawful means when an ap-

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desirable to have a struggle between a property-less class and a property-owning class, but whether such struggle exists in fact. The Communists claim that democratic institutions conceal, but do not mitigate, the concentration of political and economic power in the property-owning class, and that, for such dictatorship, there should be substituted the open, undisguised dictatorship of the property-less classes. They say that it is extremely probable that a violent upheaval will ensue when the time comes to effect such substitution (*Encyclopaedia Britannica*, 12th ed., vol. 30, p. 732 (*R. P. Dutt*); cf. *Laski's Democracy in Crisis*, pp. 194, 226, 227, 241).'

'"When the time comes."' It is, it would seem from the writings in evidence, the element of time which must be closely examined in determining whether at the present, or in the near, or very far distant, future there is to be any employment of violence and force on the part of the classes for which the Communist Party claims to speak. '"The inevitability of gradualness"' as a Socialist and Labor doctrine, the Communists reject. But they believe and advocate that a Socialist State must inevitably emerge from the very nature of capitalist economy. But when? So far as the evidence placed before us goes, there is no answer to this question. So that one possible argument, which may be open to the Communist Party in explaining their references to physical force, is that force and the threat of force are far distant from the present or the near future. The history of the attempts and failures of Communism to gain control of other political movements of the working classes may tend, upon close analysis, to show that, to turn the phrase, Communism illustrates the gradualness, the extreme gradualness, of inevitability."

propriate opportunity is created, there is no occasion for a court to refine and construe the language so as to reach a different conclusion. *United States ex rel. Abern* v. *Wallis*, 268 Fed. 413, 413–414 (S. D. N. Y.), *supra*; *Antolish* v. *Paul*, 283 Fed. 957, 959 (C. C. A. 7th); *Kenmotsu* v. *Nagle*, 44 F. (2d) 953, 955 (C. C. A. 9th). When the evidence before the Secretary is considered as a whole, whether or not supplemented by these additional portions of the Program, we do not think it can fairly be said that within the test laid down by this Court in the *Vajtauer* case (*supra*, pp. 15–16) there was not evidence to support the finding in the deportation warrant that respondent after entry became a member of an organization that believes in, advocates, and teaches the overthrow by force and violence of the Government of the United States.

Comparable evidence has been held in numerous cases to support a finding by the Secretary that the Communist Party of the United States falls within the ambit of the statute. *Skeffington* v. *Katzeff*, 277 Fed. 129, 132–133 (C. C. A. 1st), reversing *Colyer* v. *Skeffington*, 265 Fed. 17 (Mass.); *Antolish* v. *Paul*, 283 Fed. 957, 958–960 (C. C. A. 7th); *Kenmotsu* v. *Nagle*, 44 F. (2d) 953 (C. C. A. 9th), *supra*; *Kjar* v. *Doak*, 61 F. (2d) 566, 568–569 (C. C. A. 7th); *Branch* v. *Cahill*, 88 F. (2d) 545, 546 (C. C. A. 9th); *In re Saderquist*, 11 F. Supp. 525, 526–527 (Me.), affirmed *sub nom. Sorquist* v. *Ward*, 83 F. (2d) 890 (C. C. A. 1st); *United States ex rel.*

Abern v. *Wallis*, 268 Fed. 413 (S. D. N. Y.), *supra*; see also *Ex parte Vilarino*, 50 F. (2d) 582, 586 (C. C. A. 9th); *Murdoch* v. *Clark*, 53 F. (2d) 155, 156–157 (C. C. A. 1st); *Wolck* v. *Weedin*, 58 F. (2d) 928, 930 (C. C. A. 9th).[15] Cf. also *Rex* v. *Buck* (1932) 3 D. L. R. 97 (Ont. Ct. App.); Re *Worozcyt et al.*, 58 Can. Cr. Cas. 161 (Sup. Ct. Nova Scotia).

It was because of this conflict that review by this Court was sought in the present case.

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[15] Some cases apparently go to the extent of holding that even in the absence of evidence as to the aims and objectives of the Communist Party of the United States, proof of membership in that Party is alone sufficient to support deportation. (Cf. *Ungar* v. *Seaman*, 4 F. (2d) 80, 81 (C. C. A. 8th); *Murdoch* v. *Clark*, *supra*; *U. S. ex rel. Yokinen* v. *Commissioner of Immigration*, *supra*; *United States ex rel. Ohm* v. *Perkins*, 79 F. (2d) 533 (C. C. A. 2d); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 486–487 (S. D. N. Y.); see also *U. S. ex rel. Boric* v. *Marshall*, 4 F. Supp. 965, 967 (W. D. Pa.), affirmed, 67 F. (2d) 1020 (C. C. A. 3d), certiorari granted, 290 U. S. 623; dismissed on motion of petitioner 290 U. S. 709. Thus in the *Fortmueller* case, *supra*, the court (Caffey, J.) said (14 F. Supp. at 487):

"The relator stated that in 1930, the year after he came to the United States, he joined, and that he still is an active member of, a party which the courts have generally held believes in overthrowing by force or violence the government of this country. The holding, indeed, is so nearly universal that I think it would be waste of time to review the evidence introduced on the subject in the case at bar. It is sufficient for me, however, that it has been so ruled by the Circuit Court of Appeals for the Second Circuit. *United States* v. *Commissioner of Immigration*, 57 F. (2d) 707; *United*

II

THERE WAS EVIDENCE IN THE RECORD BEFORE THE SECRETARY OF LABOR TO SUPPORT THE FINDING IN THE DEPORTATION WARRANT THAT RESPONDENT BELIEVES IN AND TEACHES THE OVERTHROW BY FORCE AND VIOLENCE OF THE GOVERNMENT OF THE UNITED STATES

The question of the personal beliefs of respondent was not specifically presented by the petition for writ of certiorari, as of course it did not present, under the Court's Rules, an issue calling for review by this Court. It constituted, however, one of the grounds on which the Secretary based the order of deportation (R. 64), and was considered by the Circuit Court of Appeals (R. 71). Although this Court has often stated that it is not called upon to consider such questions (cf. *Gunning* v. *Cooley*, 281 U. S. 90, 98), it is also well settled that it may in its discretion do so. (Cf. *Langnes* v. *Green*, 282 U. S. 531, 535–539); *Camp* v. *Gress*, 250 U. S. 308, 318; *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279, 292; *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 567–568; see also *Watts, Watts and Co.* v. *Unione Austriaca de Navigazione*, 248 U. S. 9, 21; *Olmstead* v. *United States*, 277 U. S. 438, 466.

Since *habeas corpus* was properly denied in the District Court if any one of the grounds contained

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States v. *Com'r of Immigration, Ellis Island*, 65 F. (2d) 593; *United States* v. *Reimer*, 79 F. (2d) 315. That binds me."

Such a position, however, is not required in the instant case in view of the evidence.

in the warrant of deportation is sustainable, and since consideration was given the instant point in the Circuit Court of Appeals, it would seem that this Court has the power, if it desires to exercise it, to consider the point in order to effect a complete disposition of the litigation; and accordingly we submit it for consideration.

Under the test established by the *Vajtauer* case (*supra*, pp. 15–16), the finding of the Secretary in the warrant of deportation that the respondent believes in and teaches the overthrow of this Government by force and violence, should be sustained if there is *any* evidence to support it. We have heretofore pointed out that under the decisions such belief and teaching need not relate to an immediate overthrow of the Government of the United States.

The evidence discussed under Point I discloses that respondent not long before the issuance of the warrant of arrest had been a member of the Communist Party and that an objective of the Party was the overthrow, through violent revolutionary action, of the Government. A sworn statement by the respondent made on September 16, 1933, before the Acting Director of Naturalization at a hearing held by the latter in connection with a pending petition for naturalization filed by the respondent (R. 38–44), which statement was introduced in evidence at the first deportation hearing (R. 11), reveals that petitioner testified as

follows: that he purchased $1,588 worth of Soviet bonds about July 1933, four months before this country established diplomatic relations with the Soviet Government; that he was urged to buy these bonds in Communistic literature received from New York; that he might have distributed Communistic literature; that he read a Communistic newspaper; that he did not consider himself a Communist "because I am not paying dues to the Communist Party"; and that he had "read Marx's books and Marx states that sooner or later there will be a Red Government in every country in the world" (R. 42–43).

In his testimony at the preliminary examination before an Immigration Inspector on October 25, 1933, heretofore referred to (*supra*, p. 42), and likewise introduced in evidence at the first deportation hearing (R. 10), petitioner stated (R. 32–33) that at the time of his initiation into the Communist Party he was familiar with its intents and purposes; that he acquired prior knowledge of Communism from a study of the writings of Marx over a period of about ten years; that he was in accord with Marx in regard to the social order of things; that the Communist Party of America proposes to destroy capitalism and establish a government by the people similar to that now in existence in Russia; that the leaders of communism say that it will resort to armed force in the event that it should be necessary; that he would not personally bear arms against the present United States Gov-

ernment "because Communism is not strong enough now." In answer to the question "Do you think that the present form of Government in the United States should be destroyed and a Communistic or Russian form of Government established in the United States?" he answered "I think that the destruction of capitalism is inevitable and that the sooner it comes the better off we shall all be" (R. 33). He also testified that he had "handed out" some papers which he had received from the Kansas City headquarters of the Party and which called upon the people to unite against Capitalism, which meant "the present Government of the United States" (R. 33). When asked whether his party leader had advised him not to become too active in that he might be subject to deportation, he replied, "Something like that" (R. 34).

One Florence Levering, who worked at the respondent's restaurant in Hot Springs, Arkansas, for about three years (R. 18, 20) and who was respondent's mistress for about five years (R. 24, 40), testified at the first deportation hearing that respondent in his conversation with her had told her that he was a Communist (R. 18); that he thought there would be a revolution before the country would be any better than it was (R. 19); that "most everybody in town thinks" respondent is a Communist (R. 23); that respondent in the last year or two before the hearing "talked [Communism] to anybody" (R. 24); that respondent asked her before the presidential election in 1932

to distribute Communistic handbills; that he told her to be sure to put the bills out at night and that if she did not want to distribute them to get some Negro boys to do it for her (R. 26).

This résumé of testimony before the Secretary of Labor discloses, we submit, that there was at least *some* evidence to support the finding in the warrant of deportation that respondent believes in and teaches the overthrow by force and violence of the Government of the United States and that consequently the order of deportation should be upheld under the principles enunciated in the *Vajtauer* case (*supra*, pp. 15–16). While this testimony related to events and occurrences prior to the deportation hearings, there was no testimony on behalf of the respondent showing that he had changed his views, and the testimony for him, so far as it has any pertinence, was devoted either to an attempt to explain away the damaging testimony introduced against him or to a disavowal that he ever believed in or advocated the overthrow of this Government by force and violence (R. 14–16, 53–56). Such testimony, of course, created merely a conflict in the evidence before the Secretary, the resolving of which was a matter within the province of the Secretary and not within that of a court. *Berkman* v. *Tillinghast*, 58 F. (2d) 621, 622 (C. C. A. 1st); *Greco* v. *Haff*, 63 F. (2d) 863, 864 (C. C. A. 9th), *supra; United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 487 (S. D. N. Y.), *supra*. The ques-

tion on *habeas corpus* is not, of course, whether the Secretary reached a correct decision but whether there was *any* evidence to support the finding. Comparable evidence has been held sufficient to support deportation in *United States ex rel. Vojewvic* v. *Curran*, 11 F. (2d) 683, 684 (C. C. A. 2d), certiorari denied, 271 U. S. 683; *Saksagansky* v. *Weedin*, 53 F. (2d) 13, 14–16 (C. C. A. 9th); *Wolck* v. *Weedin*, 58 F. (2d) 928, 930 (C. C. A. 9th), *supra; Sormunen* v. *Nagle*, 59 F. (2d) 398, 399 (C. C. A. 9th); *United States ex rel. Lisafeld* v. *Smith*, 2 F. (2d) 90, 91 (W. D. N. Y.); *United States ex rel. Fortmueller* v. *Commissioner of Immigration, supra.* See also *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 106–111.

Also, as bearing upon the question whether there was any evidence before the Secretary to support the deportation order, it may be pointed out that two District Judges were of the view that *habeas corpus* should be denied and that they therefore necessarily came to the conclusion that there was some evidence to support at least one of the findings contained in the deportation warrant. See *Salinger* v. *Loisel*, 265 U. S. 224, 231–232.

III

THE CIRCUIT COURT OF APPEALS ERRED IN REMANDING THE CASE FOR A TRIAL DE NOVO IN THE DISTRICT COURT.

The original judgment of the Circuit Court of Appeals simply reversed the order of the District Court and remanded the cause to it (R. 74). There-

after the court denied a petition for rehearing filed by the Government (R. 74–76), but without the request of either party the judgment was amended to read "Reversed, with directions to try the issues de novo as suggested in Ex Parte Fierstein, 41 Fed. (2d) p. 54" (R. 77). A second petition for rehearing and to set aside the amended judgment was thereupon filed by the Government urging that a trial *de novo* in the District Court was an improper disposition of the case (R. 80–81). This petition was entertained by the court and denied (R. 83). The action of the Circuit Court of Appeals in ordering a trial *de novo* was specified in the Government's petition for a writ of certiorari (p. 5) as an error to be urged.

Prior to the amending of its judgment to provide for a trial *de novo* of the issues in the District Court, the Circuit Court of Appeals had in one sentence (R. 71) of its four-page opinion (R. 71–74) rejected the respondent's contention that the hearings in the Labor Department were unfair and had, in accepting the respondent's contention that the evidence did not support the findings in the warrant of deportation, devoted most of the remainder of its opinion to that question. It would therefore seem that the Circuit Court of Appeals, in remanding the case for a trial *de novo,* did not intend a retrial of the issue of the fairness of the Labor Department hearings. What it undoubtedly had in mind was a remanding of the case to the District Court for a trial which

would comprehend the introduction of evidence with reference to the truth of the charges upon which the Secretary found the respondent deportable. This is indicated by the fact that the Circuit Court of Appeals denied a petition for rehearing by the Government at the time it ordered the trial *de novo* in the District Court (R. 77) and that Judge Sibley dissented from the denial of this petition, on the ground that there should be a rehearing in the Circuit Court of Appeals at which consideration should be given to the significance of the references to the Third Communist International contained in the membership book issued to respondent by the Communist Party of the United States and to the question whether the objectives and programs of the two organizations could be judicially noticed (R. 77). This view of the remand is also supported by the Court's reference to the decision of the Circuit Court of Appeals for the Ninth Circuit in *Ex parte Fierstein*, 41 F. (2d) 53, in directing the trial *de novo* in the District Court. In that case the only testimony before the District Court or considered by the Board of Review of the Labor Department was that of a detective, who arrested Fierstein, that he had no doubt from reading documents issued by the Workers' Communist Party of America and the Communist International while he was a member of the Workers Party of America seven years before the arrest, that the Communist Party believes in, teaches, and advocates the overthrow of this Government by force.

Although the Circuit Court of Appeals held that this evidence was not sufficient to justify deportation on the ground specified in the warrant, it nevertheless reversed and remanded the case for a trial *de novo* in the District Court, citing, among other decisions, the decisions of this Court in *Ng Fung Ho* v. *White*, 259 U. S. 276, and *Chin Yow* v. *United States*, 208 U. S. 8, 13.

From the citation of these decisions it would appear that the Circuit Court of Appeals for the Ninth Circuit in the *Fierstein* case and the Circuit Court of Appeals in the instant case, in directing a new trial in the District Court, misapplied the decisions of this Court holding that in deportation cases the issue of alienage or citizenship is one which may be tried *de novo* in the District Court on *habeas corpus*. The distinction between such an issue and that involved in the instant case was thus pointed out by the Circuit Court of Appeals for the Sixth Circuit in *Exedahtelos* v. *Fluckey*, 54 F. (2d) 858, 859:

> "Congress may properly devolve a proceeding to enforce regulations under which aliens are permitted to remain within the United States upon an executive department." *Zakonaite* v. *Wolf*, 226 U. S. 272, 33 S. Ct. 31, 57 L. Ed. 218. The courts may interfere (where citizenship is not claimed) only where there has been a denial of a fair hearing, or the finding was not supported by evidence, or there was an application of

an erroneous rule of law. *Ng Fung Ho* v. *White*, 259 U. S. 276, 284, 42 S. Ct. 492, 66 L. Ed. 938. Where, as here, the proceeding is wholly executive in its nature, constitutional courts should not assume jurisdiction to decide the fact issues. Cf. *Federal Radio Commission* v. *General Electric Co.*, 281 U. S. 464, 469, 50 S. Ct. 389, 74 L. Ed. 969.

Where a question of citizenship is involved, the case obviously stands upon a different foundation. Alienage is essential to jurisdiction by the department (*Bilokumsky* v. *Tod*, 263 U. S. 149, 44 S. Ct. 54, 68 L. Ed. 221), and it is now definitely established that jurisdiction of the federal courts to determine this question of status may be invoked in habeas corpus proceedings. (*Chin Yow* v. *United States*, 208 U. S. 8, 28 S. Ct. 201, 52 L. Ed. 369; *Kwock Jan Fat* v. *White*, 253 U. S. 454, 40 S. Ct. 566, 64 L. Ed. 1010; *Ng Fung Ho* v. *White*, supra; *In re Chan Foo Lin*, 243 F. 137 (C. C. A. 6); *In re Can Pon*, 168 F. 479 (C. C. A. 9).

The Circuit Court of Appeals for the Sixth Circuit accordingly rejected the practice followed in cases in the Eighth and Ninth Circuits, including the *Fierstein* case, and reversed an order of the District Court based upon evidence taken in a trial *de novo* in that court upon the merits of the charge contained in the warrant where that court had previously held that the evidence before the immigration officers was not sufficient to support the warrant. The Circuit Court of Appeals pointed

out that where the District Court concludes that the deportation order is not supportable by evidence and there is absent the issue of alienage or citizenship, two courses are open: an order of absolute discharge from custody or an order of conditional discharge subject to further proceedings being taken by the immigration officers within a designated time.[16]

The amendment of the judgment of reversal in the instant case to provide for a trial *de novo* in the District Court was also contrary to the prior decision of the court below in *Lindsey* v. *Dobra,* 62 F. (2d) 116, 117 (C. C. A. 5th), where the court held:

> The taking in the District Court of additional evidence on the merits was excepted to. Though the evidence adduced does not appear to be of controlling importance, we must hold its reception to be improper. Aside from questions of citizenship or coercion or fraud in the hearing, a retrial of fact issues on new evidence is not in order. *Exedahtelos* v. *Fluckey* (6 C. C. A.), 54 F. (2d) 858. Where additional evidence on the merits is allowed in the District Court, it should be only after the order of deportation has been condemned as invalid and for the purpose of settling the question whether the

[16] The court recognized that while a trial *de novo* might not be had in the District Court to establish the truth of the charges in the warrant of deportation, that court might take evidence to determine which of the two courses above referred to it should follow (p. 858).

court should discharge the alien or hold him for further hearing before the executive authorities. *Whitfield* v. *Hanges* (C. C. A.), 222 F. 745, 747.

Since the Circuit Court of Appeals, we submit, erroneously ordered a trial *de novo* in the District Court in the instant case, this Court, if it concludes that the judgment of reversal was correct, should nevertheless modify the judgment to eliminate the direction for a new trial in the District Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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APPENDIX A

STATUTORY PROVISIONS

Act of March 3, 1903, c. 1012, Sections 2, 21, 38, 32 Stat. 1214, 1218–1219, 1221, as pertinent, provides:

> SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, insane persons, epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, *or persons who believe in or advocate the overthrow by force or violence of the Government of the United States* or of all government or of all forms of law, or the assassination of public officials; prostitutes, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution; those who have been, within one year from the date of the application for admission to the United States, deported as being under offers, solicitations, promises or agreements to perform labor or service of some kind therein; and also any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to

one of the foregoing excluded classes; but this section shall not be held to prevent persons living in the United States from sending for a relative or friend who is not of the foregoing excluded classes: *Provided,* That nothing in this Act shall exclude persons convicted of an offense purely political, not involving moral turpitude: *And provided further,* That skilled labor may be imported, if labor of like kind unemployed can not be found in this country: *And provided further,* That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants.

SEC. 20. That any alien who shall come into the United States in violation of law, or who shall be found a public charge therein, from causes existing prior to landing, shall be deported as hereinafter provided to the country whence he came at any time within two years after arrival at the expense, including one-half of the cost of inland transportation to the port of deportation, of the person bringing such alien into the United States, or, if that can not be done, then at the expense of the immigrant fund referred to in section one of this Act.

SEC. 21. That in case the Secretary of the Treasury shall be satisfied that an alien has been found in the United States in violation of this Act he shall cause such alien, within the period of three years after landing or entry therein, to be taken into custody and returned to the country whence he came, as provided in section twenty of this Act, or,

if that can not be so done, at the expense of the immigrant fund provided for in section one of this Act; and neglect or refusal on the part of the masters, agents owners, or consignees of vessels to comply with the order of the Secretary of the Treasury to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this section shall be punished by the imposition of the penalties prescribed in section nineteen of this Act.

SEC. 38. *That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government,* or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any Territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe. [Italics ours.]

Act of February 20, 1907, c. 1134, Sections 2, 21, 38; 34 Stat. 898, 899, 904–905, 908–909, as pertinent, provides:

SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: * * *; polygamists, or persons who admit their belief in the practice of polygamy, anarchists, or *persons who*

believe in or advocate the overthrow by force or violence of the Government of the United States, or of all government, or of all forms of law, or the assassination of public officials;

Sec. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. Such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the "immigrant fund" provided for in section one of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessel or transportation line by which such aliens respectively came: *Provided,* That pending the final disposal of the case of any alien so taken into custody he may be released under a bond in the penalty of not less than five hundred dollars with security approved by the Secretary of Commerce and Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States.

Sec. 21. That in case the Secretary of Commerce and Labor shall be satisfied that

an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this Act, and a failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section nineteen of this Act: *Provided,* That when in the opinion of the Secretary of Commerce and Labor the mental or physical condition of such alien is such as to require personal care and attendance, he may employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in like manner.

SEC. 38. *That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government,* or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof.

This section shall be enforced by the Secretary of Commerce and Labor under such rules and regulations as he shall prescribe. [Italics ours.]

Act of February 5, 1917, c. 29, Sections 3, 19, 39 Stat. 874, 875–878, 889–890, as pertinent, provides:

SEC. 3. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers, professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or *persons who believe in or advocate the overthrow by force or violence of the Government of the United States,* or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the unlawful destruction of property; *persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to*

organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written, or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this Act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for admission; persons whose tickets or passage is paid for with the money of another, or

who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next foregoing, however, shall not

apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act. [Italics ours.]

That after three months from the passage of this Act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uni-

form size, prepared under the direction of the Secretary of Labor; each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect: That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years, and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: *Provided,* That nothing in this Act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: *Provided further,* That the provisions of this Act, relating to the payments for tickets or passage

by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *Provided further,* That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: *Provided further,* That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: *Provided further,* That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone:

Provided further, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe: *Provided further,* That nothing in the contract-labor or reading-test provisions of this Act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by Act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country, as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: *Provided further,* That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: *Provided further,* That nothing in this Act shall be construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests.

SEC. 19. That at any time within five years after entry, any alien who at the time

of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or

attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided,* That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further,* That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge

thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further,* That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further,* That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further,* That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

Act of October 16, 1918, c. 186, Sections 1 and 2, 40 Stat. 1012, provides:

SEC. 1. That aliens who are anarchists; *aliens who believe in or advocate the overthrow by force or violence of the Govern-*

ment of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; *aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States* or of all forms of law, or that entertains or teaches disbelief in, or opposition to, all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States.

SEC. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or *to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act,* shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the Immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States. (U. S. C., Title 18, Sec. 136 (g).) [Italics ours.]

Act of June 5, 1920, c. 251, 41 Stat. 1008–1009 (U. S. C., Title 8, Sec. 137 (a)–(b), provides:

That section 1 of the Act entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes," approved October 16, 1918, is amended to read as follows:

"That the following aliens shall be excluded from admission into the United States:

"(a) Aliens who are anarchists;

"(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government;

"(c) Aliens who believe in, advise, advocate, or teach, or *who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States* or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of all forms of law, or (2) government, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

"(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, pub-

lication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

"(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d).

"For the purpose of this section (1) the giving, loaning or promising of money or any thing of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning or promising of money or any thing of value to any organization, association, society, or group, of the character above described, shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation." [Italics ours.]

APPENDIX B

Program of the Communist International, Chapter VI, section 2:[1]

2. THE FUNDAMENTAL TASKS OF COMMUNIST STRATEGY AND TACTICS

The successful struggle of the Communist International for the dictatorship of the proletariat presupposes the existence in every country of a compact Communist Party, hardened in the struggle, disciplined, centralized, and closely linked up with the masses.

The Party is the vanguard of the working class and consists of the best, most class-conscious, most active, and most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle. Basing itself upon the revolutionary theory of Marxism and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will, and of proletarian revolutionary action. It is a revolutionary organization, bound by iron discipline and strict revolutionary rules of democratic centralism, which can be carried out thanks to the class consciousness of the proletarian vanguard, to its loyalty to the revolution, its ability to maintain inseparable ties with the proletarian masses, and to its correct political

[1] Published by Workers Library Publishers, Inc. (N. Y., 2d ed., 1933), pp. 78–87.

leadership, which is constantly verified and clarified by the experiences of the masses themselves.

In order that it may fulfill its historic mission of achieving the dictatorship of the proletariat, the Communist Party must first of all set itself and accomplish the following fundamental *strategic* aims:

Extend its influence over the *majority of members of its own class,* including working women and the working youth. To achieve this the Communist Party must secure predominant influence in the broad mass proletarian organiations (Soviets, trade unions, factory committees, cooperative societies, sport organiations, cultural organizations, etc.). It is particularly important for the purpose of winning over the majority of the proletariat, to capture the *trade unions,* which are genuine mass working-class organizations closely bound up with the every-day struggles of the working class. To work in reactionary trade unions and skillfully to capture them, to win the confidence of the broad masses of the industrially organized workers, to change and "remove from their posts" the reformist leaders, represent important tasks in the preparatory period.

The achievement of the dictatorship of the proletariat presupposes also that the proletariat acquires hegemony over *wide sections of the toiling masses.* To accomplish this the Communist Party must extend its influence over the masses of the urban and rural poor, over the lower strata of the intelligentsia and over the so-called small man, i. e., the petty-bourgeois strata generally. It is particularly important that work be carried on for the purpose of ex-

tending the Party's influence over the *peasantry*. The Communist Party must secure for itself the whole-hearted support of that stratum of the rural population that stands closest to the proletariat, i. e., the agricultural laborers and the rural poor. To this end, the agricultural laborers must be organized in separate organizations; all possible support must be given them in their struggles against the rural bourgeoisie, and strenuous work must be carried on among the small allotment farmers and small peasants. In regard to the middle strata of the peasantry in developed capitalist countries, the Communist Parties must conduct a policy to secure their neutrality. The fulfillment of all these tasks by the proletariat—the champion of the interests of the whole people and the leaders of the broad masses in their struggle against the oppression of finance capital—is an essential condition precedent for the victorious Communist revolution.

The tasks of the Communist International connected with the revolutionary struggle in *colonies, semi-colonies, and dependencies* are extremely important strategic tasks in the world proletarian struggle. The colonial struggle presupposes that the broad masses of the working class and of the peasantry in the colonies be rallied around the banner of the revolution; but this cannot be achieved unless the closest cooperation is maintained between the proletariat in the oppressing countries and the toiling masses in the oppressed countries.

While organizing, under the banner of the proletarian dictatorship, the revolution against imperialism in the so-called civilized States, the Communist International supports every movement against imperialist

violence in the colonies, semi-colonies, and dependencies themselves (for example Latin-America); it carries on propaganda against all forms of chauvinism and against the imperialist maltreatment of enslaved peoples and races, big and small (treatment of Negroes, "yellow labor," anti-semitism, etc.), and supports their struggles against the bourgeoisie of the oppressing nations. The Communist International especially combats the chauvinism that is preached in the Empire-owning countries by the imperialist bourgeoisie as well as by its social-democratic agency, the Second International, and constantly holds up in contrast to the practices of the imperialist bourgeoisie and the practice of the Soviet Union, which has established relations of fraternity and equality among the nationalities inhabiting it.

The Communist Parties in the *imperialist countries* must render systematic aid to the colonial revolutionary liberation movement and to the movement of oppressed nationalities generally. The duty of rendering active support to these movements rests primarily upon the workers in the countries upon which the oppressed nations are economically, financially or politically dependent. The Communist Parties must openly recognize the right of the colonies to separation and their right to carry on propaganda for this separation, i. e., propaganda in favor of the independence of the colonies from the imperialist State; they must recognize their right of armed defense against imperialism (i. e., the right of rebellion and revolutionary war) and advocate and give active support to this defense by all the means in their power. The Communist Parties must adopt this line of policy in regard to all oppressed nations.

The Communist Parties in the *colonial and semi-colonial countries* must carry on a bold and consistent struggle against foreign imperialism and unfailingly conduct propaganda in favor of friendship and unity with the proletariat in the imperialist countries. They must openly advance, conduct propaganda for and carry out the slogan of agrarian revolution, rouse the broad masses of the peasantry for the overthrow of the landlords and combat the reactionary and medieval influence of the clergy, of the missionaries and other similar elements.

In these countries, the principal task is to organize the workers and the peasantry *independently* (to establish class Communist Parties of the proletariat, trade unions, peasant leagues and committees and, in a revolutionary situation, Soviets, etc.), and to free them from the influence of the national bourgeoisie, with whom temporary agreements may be made only on the condition that they, the bourgeoisie, do not hamper the revolutionary organization of the workers and peasants, and that they carry on a genuine struggle against imperialism.

In determining its line of *tactics*, each Communist Party must take into account the concrete internal and external situation, the correlation of class forces, the degree of stability and strength of the bourgeoisie, the degree of preparedness of the proletariat, the position taken up by the various intermediary strata in its country, etc. The Party determines its slogans and methods of struggle in accordance with these circumstances, with the view to organizing and mobilizing the masses on the broadest possible scale and on the highest possible level of this struggle.

When a revolutionary situation is developing, the Party advances certain transitional slogans and partial demands corresponding to the concrete situation; but these demands and slogans must be bent to the revolutionary aim of capturing power and of overthrowing bourgeois capitalist society. The Party must neither stand aloof from the daily needs and struggles of the working class nor confine its activities exclusively to them. The task of the Party is to utilize these minor every-day needs as a *starting point* from which to lead the working class to the *revolutionary struggle for power.*

When the revolutionary tide is rising, when the ruling classes are disorganized, the masses are in a state of revolutionary ferment, the intermediary strata are inclining towards the proletariat and the masses are ready for action and for sacrifice, the Party of the proletariat is confronted with the task of leading the masses to a direct attack upon the bourgeois State. This it does by carrying on propaganda in favor of increasingly radical transitional slogans (for Soviets, workers' control of industry, for peasant committees for the seizure of the big landed properties, for disarming the bourgeoisie and arming the proletariat, etc.), and by organizing *mass action,* upon which all branches of the Party agitation and propaganda, including parliamentary activity, must be concentrated. This mass action includes: a combination of strikes and demonstrations; a combination of strikes and armed demonstrations; and finally, the general strike conjointly with armed insurrection against the State power of the bourgeoisie. The latter form of struggle, which is the supreme form, must

be conducted according to the rules of war; it presupposes a plan of campaign, offensive fighting operations and unbounded devotion and heroism on the part of the proletariat. An absolutely essential condition precedent for this form of action is the organization of the broad masses into militant units, which, by their very form, embrace and set into action the largest possible numbers of toilers (Councils of Workers' Deputies, Soldiers' Councils, etc.), and intensified revolutionary work in the army and the navy.

In passing over to new and more radical slogans, the Parties must be guided by the fundamental role of the political tactics of Leninism, which call for ability to lead the masses to revolutionary positions in such a manner that the masses many [may], by their own experience, convince themselves of the correctness of the Party line. Failure to observe this rule must inevitably lead to isolation from the masses, to putschism, to the ideological degeneration of Communism into "Leftist" dogmatism and to petty-bourgeouis "revolutionary" adventurism. Failure to take advantage of the culminating point in the development of the revolutionary situation, when the Party of the proletariat is called upon to conduct a bold and determined attack upon the enemy, is not less dangerous. To allow that opportunity to slip by and to fail to start rebellion at that point, means to allow the initiative to pass to the enemy and to doom the revolution to defeat.

When the *revolutionary tide is not rising,* the Communist Parties must advance *partial* slogans and demands that correspond to the every-day needs of the toilers, and com-

bine them with the fundamental tasks of the Communist International. The Communist Parties must not, however, at such a time, advance *transitional* slogans that are applicable only to revolutionary situations (for example workers' control of industry, etc.). To advance such slogans when there is no revolutionary situation means to transform them into slogans that favor merging with the capitalist system of organization. Partial demands and slogans generally form an essential part of correct tactics; but certain transitional slogans go inseparably with a revolutionary situation. Repudiation of partial demands and *transitional* slogans "on principle", however, is incompatible with the tactical principle of Communism, for in effect such repudiation condemns the Party to inaction and isolates it from the masses. *United front tactics* also occupy an important place in the tactics of the Communist Parties throughout *the whole pre-revolutionary period* as a means towards achieving success in the struggle against capital, towards the class mobilization of the masses and the exposure and isolation of the reformist leaders.

The correct application of united front tactics and the fulfillment of the general task of winning over the masses presupposes in their turn systematic and persistent work in the *trade unions* and other mass proletarian organizations. It is the bounden duty of every Communist to belong to a trade union, even a most reactionary one, provided it is a mass organization. Only by constant and persistent work in the trade unions and in the factories for the steadfast and energetic defense of the interests of the workers, together with ruthless struggle

against the reformist bureaucracy, will it be possible to win the leadership in the workers' struggle and to win the industrially organized workers over to the side of the Party.

Unlike the reformists, whose policy is to split the trade unions, the Communists defend *trade union unity* nationally and internationally on the basis of the class struggle, and render every support to and strengthen the work of the *Red International of Labor Unions.*

In universally championing the current every-day needs of the masses of the workers and of the toilers generally, in utilizing the burgeois parliament as a platform for revolutionary agitation and propaganda, and subordinating the partial tasks to the struggle for the dictatorship of the proletariat, the Parties of the Communist International advance partial demands and slogans in the following main spheres:

In the sphere of *labor,* in the narrow meaning of the term, i. e. questions concerned with the *industrial struggle* (the fight against the trustified capitalist offensive, wage questions, the working day, compulsory arbitration, unemployment), which *grow* into questions of the general political struggle (big industrial conflicts, fight for the right to organize, right to strike, etc.); in the sphere of *politics* proper (taxation, high cost of living, Fascism, persecution of revolutionary parties, white terror and current politics generally); and finally the sphere of *world* politics; viz, attitude towards the U. S. S. R. and colonial revolutions, struggle for the unity of the international trade union movement, struggle against imperialism and the war danger, and systematic preparation for the fight against *imperialist war.*

In the sphere of the *peasant* problems, the partial demands are those appertaining to taxation, peasant mortgage indebtedness, struggle against usurer's capital, the land hunger of the peasant small holders, rent, the metayer (crop-sharing) system. Starting out from these partial needs, the Communist Party must sharpen the respective slogans and broaden them out into the slogans: confiscation of large estates, and workers' and peasants' government (the synonym for proletarian dictatorship in developed capitalist countries and for democratic dictatorship of the proletariat and peasantry in backward countries and in certain colonies).

Systematic work must also be carried on among the proletarian and peasant *youth* (mainly through the Young Communist International and its sections) and also among *working women and peasant women.* This work must concern itself with the special conditions of life and struggle of the working and peasant women, and their demands must be linked up with the general demands and fighting slogans of the proletariat.

In the struggle against *colonial oppression,* the Communist Parties *in the colonies* must advance partial demands that correspond to the special circumstances prevailing in each country such as: complete equality for all nations and races; abolition of all privileges for foreigners; the right of association for workers and peasants; reduction of the working day; prohibition of child labor; prohibition of usury and of all transactions entailing bondage; reduction and abolition of rent; reduction of taxation; refusal to pay taxes, etc. All these partial slogans must be subordinate to the fundamental demands of the Communist Parties such as:

complete political national independence and the expulsion of the imperialists, workers' and peasants' government, the land to the whole people, eight-hour day, etc. The Communist Parties in *imperialist countries*, while supporting the struggle proceeding in the colonies, must carry on a campaign in their own respective countries for the withdrawal of imperialist troops, conduct propaganda in the army and navy in defense of the oppressed countries fighting for their liberation, mobilize the masses to refuse to transport troops and munitions and, in connection with this, to organize strikes and other forms of mass protest, etc.

The Communist International must devote itself especially to systematic preparation for the struggle against the *danger of imperialist wars*. Ruthless exposure of social chauvinism, of social imperialism, and of pacifist phrasemongering intended to camouflage the imperialist plans of the bourgeoisie; propaganda in favor of the principal slogans of the Communist International; everyday organization work in connection with this, in the course of which work legal methods must unfailingly be combined with illegal methods; organized work in the army and navy—such must be the activity of the Communist Parties in this connection. The fundamental slogans of the Communist International in this connection must be the following: Convert imperialist war into civil war; defeat the "home" imperialist government; defend the U. S. S. R. and the colonies by every possible means in the event of imperialist war against them. It is the bounden duty of all Sections of the Communist International, and of every one of its members, to carry

on propaganda for these slogans, to expose the "Socialistic" sophisms and the "Socialist" camouflage of the League of Nations and constantly to keep to the front the experiences of the war of 1914–1918.

In order that revolutionary work and revolutionary action may be coordinated and in order that these activities may be guided most successfully, the international proletariat must be bound by *international class discipline*, for which, first of all, it is most important to have the strictest international discipline in the Communist ranks.

The international Communist discipline must find expression in the subordination of the partial and local interests of the movement to its general and lasting interests and in the strict fulfillment, by all members, of the decisions passed by the leading bodies of the Communist International.

Unlike the Social-Democratic, Second International, each section of which submits to the discipline of "its own," national bourgeoisie and of its own "fatherland," the sections of the Communist International submit to only one discipline, viz., international proletarian discipline, which guarantees victory in the struggle of the world's workers for world proletarian dictatorship. Unlike the Second International, which splits the trade unions, fights against colonial peoples, and practices unity with the bourgeoisie, the Communist International is an organization that guards proletarian unity in all countries and the unity of the toilers of all races and all peoples in their struggle against the yoke of imperialism.

Despite the bloody terror of the bourgeoisie, the Communists fight with courage and devotion on all sectors of the international

class front, in the firm conviction that the victory of the proletariat is inevitable and cannot be averted.

"The Communists disdain to conceal their views and aims. They openly declare that their aims can be attained only by the forcible overthrow of all the existing social conditions. Let the ruling class tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win.

"Workers of all countries, unite!" [Italics in original.][2]

[2] These final two paragraphs of the Program are taken from the concluding paragraphs of The Communist Manifesto, by Marx and Engels, issued in 1848.

APPENDIX C

The Twenty-one Conditions of Admission Into the Communist International:[1]

The Second Congress of the Communist International resolves that the conditions for membership in the Communist International shall be as follows:

1. The daily propaganda and agitation must bear a truly Communist character and correspond to the program and all the decisions of the Third International. All the organs of the press that are in the hands of the Party must be edited by reliable Communists who have proved their loyalty to the cause of the proletarian revolution. The dictatorship of the proletariat should not be spoken of simply as a current hackneyed formula; it should be advocated in such a way that its necessity should be apparent to every rank-and-file working man and woman, each soldier and peasant, and should emanate from the facts of everyday life systematically recorded by our press day after day.

The periodical and non-periodical press and all Party publishing organizations must be wholly subordinate to the Central Committee of the Party, irrespective as to whether the Party as a whole, at the given moment, is legal or illegal. That publishing organizations, abusing their autonomy,

[1] Adopted at the Second Congress of the Communist International held in Moscow, July 17 to August 7, 1920. Published by Workers Library Publishers, Inc. (N. Y., 1934).

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should pursue a policy that does not completely correspond to the policy of the Party cannot be tolerated.

In the columns of the newspapers, at public meetings, in the trade unions, in the cooperative societies—wherever the adherents of the Third International gain access, they must systematically and mercilessly denounce not only the bourgeoisie, but also its assistants, the reformists of every shade.

2. Every organization desiring to belong to the Communist International must steadily and systematically *remove* from all responsible posts in the Labor movement in the Party organization, editorial boards, trade unions, parliamentary fractions, cooperative societies, municipalities, etc., all reformists and followers of the "Center," and have them replaced by Communists even at the cost of replacing at the beginning, "experienced" leaders by rank-and-file workingmen.

3. The class struggle in almost all the countries of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois law. They must *everywhere* create a parallel illegal apparatus, which at the decisive moment could assist the Party in performing its duty to the revolution. In all countries where, in consequence of martial law or exceptional laws, the Communists are unable to carry on all their work legally, a combination of legal and illegal work is absolutely necessary.

4. The obligation to spread Communist ideas includes the particular necessity of persistent, systematic propaganda in the army. Wherever such propaganda is forbidden by exceptional laws, it must be carried on ille-

gally. The abandonment of such work would be equivalent to the betrayal of revolutionary duty and is incompatible with membership in the Third International.

5. It is necessary to carry on systematic and steady agitation in the rural districts. The working class cannot consolidate its victory without the backing of at least part of the agricultural laborers and the poorest peasants, and without having neutralized, by its policy, a part of the rest of the rural population. Communist work in the rural districts is acquiring a predominant importance during the present period. It should be carried on in the main, by revolutionary Communist workers of both city and country only, who have connections with the rural districts. To refuse to do this work or to transfer such work to untrustworthy half-reformists is equal to renouncing the proletarian revolution.

6. Every party that desires to belong to the Third International must expose, not only open social patriotism, but also the falsity and hypocricy of social-pacifism; it must systematically demonstrate to the workers that without the revolutionary overthrow of capitalism, no international arbitration courts, no disarmament, no "democratic" reorganization of the League of Nations will save mankind from new imperialist wars.

7. The Parties desiring to belong to the Communist International must recognize the necessity of a complete and absolute rupture with reformism and the policy of the "Center," and they must carry on propaganda in favor of this rupture among the broadest circles of the party membership. Otherwise a consistent Communist policy is impossible.

The Communist International unconditionally and peremptorily demands that this split be brought about *with the least delay*. The Communist International cannot reconcile itself to the fact that such avowed reformists, as Turatti, Kautsky, Hilferding, Hillquit, Longuet, MacDonald, Modigliani, and others should be entitled to consider themselves members of the Third International. This would make the Third International resemble, to a considerable degree, the late Second International.

8. On the question of the colonies and oppressed nationalities an especially distinct and clear line must be taken by the parties in those countries where the bourgeoisie possesses colonies or oppresses other nations. Every party desirous of belonging to the Third International must ruthlessly denounce the methods of "their own" imperialists in the colonies, supporting, not in words, but in deeds, every independence movement in the colonies. It should demand the expulsion of their own imperialists from such colonies, and cultivate among the workers of their own country a truly fraternal attitude towards the toiling population of the colonies and oppressed nationalities, and carry on systematic agitation in its own army against every kind of oppression of the colonial population.

9. Every party that desires to belong to the Communist International must carry on systematic and persistent Communist work in the trade-unions, in workers' and industrial councils, in the cooperative societies, and in other mass organizations. Within these organizations it is necessary to create Communist groups, which by means of practical and stubborn work must win over the

trade-unions, etc., for the cause of Communism. These cells should constantly denounce the treachery of the social patriots and the vacillations of the "Center," at every step. These Communist groups should be completely subordinate to the Party as a whole.

10. Every party that belongs to the Communist International must carry on a stubborn struggle against the Amsterdam "International" of yellow trade-unions. It must persistently propagate among the organized workers the necessity of a rupture with the yellow Amsterdam International. It must give all the support in its power to the incipient international alliance of the Red trade-unions affiliated to the Communist International.

11. The parties desiring to belong to the Third International must overhaul the membership of their parliamentary fractions, eliminate all unreliable elements from them, to control these fractions, not only verbally but in reality, to subordinate them to the Central Committee of the Party, and demand from every Communist member of parliament that he devote his entire activities to the interests of really revolutionary propaganda and agitation.

12. Parties belonging to the Communist International must be built up on the principle of democratic *centralism*. At the present time of acute civil war, the Communist Party will only be able fully to do its duty when it is organized in the most centralized manner, if it has iron discipline, bordering on military discipline, and if the Party center is a powerful, authoritative organ with wide powers, possessing the general trust of the party membership.

13. The Communist parties of those countries where the Communists' activity is legal shall make periodical cleanings (re-registration) of the members of the Party organizations, so as to systematically cleanse the party from the petty-bourgeois elements who inevitably attach themselves to it.

14. Every party that desires to belong to the Communist International must give every possible support to the Soviet Republics in their struggle against all counter-revolutionary forces. The Communist parties should carry on a precise and definite propaganda to induce the workers to refuse to transport munitions of war intended for enemies of the Soviet Republics, carry on legal or illegal propaganda among the troops, which are sent to crush the workers' republics, etc.

15. The parties which up to the present have retained their old Social-Democratic programs must in the shortest possible time overhaul these programs and draw up a new Communist program in conformity with the special conditions of their respective countries and in accordance with resolutions of the Communist International. As a rule, the program of every party that belongs to the Communist International must be ratified by the next Congress of the Communist International or by the Executive Committee. In the event of the Executive Committee of the Communist International failing to ratify the program of a particular party, that party has the right to appeal to the Congress of the Communist International.

16. All decisions of the Congresses of the Communist Inte...ional, as well as the decisions of its Executive Committee, are bind-

ing on all parties affiliated to the Communist International. The Communist International, operating in the midst of most acute civil war, must have a far more centralized form of organization than that of the Second International. At the same time, the Communist International and its Executive Committee must, of course, in all their activities, take into consideration the diversity of the conditions under which the various parties have to work and fight, and should issue universally binding decisions only on questions on which the passing of such decisions is possible.

17. In connection with all this, all parties desiring to join the Communist International must change their names. Every party that desires to join the Communist International must bear the name: *Communist Party* of such-and-such country (Section of the Third, Communist International). This question as to name is not merely a formal one, but a political one of great importance. The Communist International has declared a decisive war against the entire bourgeois world and all the yellow, Social-Democratic parties. Every rank-and-file worker must clearly understand the difference between the Communist Parties and the old official "Social-Democratic" or "Socialist" parties which have betrayed the cause of the working class.

18. All the leading Party organs of the press in all countries must publish all the chief documents of the Executive Committee of the Communist International.

19. All parties belonging to the Communist International, or having made an application to join it, must, in the shortest possible period, but not later than four months

after the Second Congress of the Communist International, call special Party congresses, for the purpose of discussing these obligations. In this connection, the Central Committees must take measures to enable all the local organizations to become acquainted with the decisions of the Second Congress of the Communist International.

20. The parties that would now like to join the Third International but which have not yet radically changed their former tactics, must, before joining, take steps to ensure that their Central Committees and all most important central bodies of the respective parties, shall be composed, to the extent of at least two-thirds, of such comrades as even prior to the Second Congress of the Communist International have openly and definitely declared for joining the Third International. Exceptions may be made with approval of the Executive Committee of the Third International. The Executive Committee of the Communist the representatives of the "Center" mentioned in point 7.

21. *Members of the Party who reject the conditions and theses of the Communist International, on principle, must be expelled from the party.*

This applies also to the delegates to the special Party Congresses.

U. S. GOVERNMENT PRINTING OFFICE: 1939